

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

| | | |
|---|---|---------------------------|
| THERESA MARIE SIMEONE, Personal | : | |
| Representative of the Estate of Albert Francis | : | |
| Simeone, Jr., Deceased, and THERESA MARIE | : | CIVIL ACTION NO. 02CV4852 |
| SIMEONE, In Her Own Right, and | : | |
| MARY ANN LENGYEL, Personal | : | |
| Representative of the Estate of George Lengyel, | : | |
| Deceased, and MARY ANN LENGYEL, | : | JURY TRIAL DEMANDED |
| In Her Own Right | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | |
| | : | |
| BOMBARDIER-ROTAX GmbH, et al. | : | |
| | : | |
| Defendants. | : | |

DEFENDANTS' OPPOSITION TO PLAINTIFFS' BILL OF COSTS

Defendants BRP-Rotax GmbH & Co. KG f/kJa Bombardier-Rotax GmbH & Co. KG and Bombardier Inc. (collectively herein, "Defendants") submit the following Opposition to Plaintiffs' Bill of Costs and request by Plaintiffs to have the Clerk tax their submitted Bill of Costs (a copy of Plaintiffs' Bill of Costs, filed November 3, 2005, is attached hereto as Exhibit "A").

Initially, as set forth below, the Clerk "may," but is not required to, tax costs to the Judgment in this case. For this reason, Defendants respectfully request that the Clerk deny Plaintiffs' application in its entirety. Alternatively, Defendants respectfully request that the Clerk reduce Plaintiffs' costs as excessive and unreasonable. Additionally, Defendants point out

the Plaintiffs seek costs for certain items which they are not entitled to receive costs. These items are set forth below.

THE LAW

The law concerning costs is governed by 28 *USCS* § 1920, which states:

§ 1920. Taxation of costs

A judge or clerk of any court of the United States may tax as costs the following:

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this *title* [28 *USCS* § 1923];
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this *title* [28 *USCS* § 1828].

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

The Bill of Costs that Plaintiffs filed is not accurate. Defendants will respond in the order set forth in Plaintiffs' filing.

DEFENDANTS' ARGUMENT

1. Fees for Witnesses (limited to: \$5,157.00)

Plaintiffs seek \$8,218.00 in costs relating to witness fees (Exhibit A). However, Herbert Newbold was not a witness at the trial and therefore \$2,896.00 in "costs" are not appropriate. Further, Manuel Raefsky only testified for one-half (1/2) of one (1) day and, thus, the costs relating to Mr. Raefsky should be reduced by \$165.00 (\$40.00 attendance plus \$125.00

subsistence). Accordingly, Plaintiffs' request for costs in this category, \$8,218.00, should be reduced by \$3,061.00 (\$2,896.00 –Newbold; and \$165.00-Rafesky) thereby totaling **\$5,157.00**.

2. Fees for Clerk (limited to: \$163.00)

Plaintiffs seek "Fees for the Clerk" in the amount of \$1044.50. However, all but \$163.00 relates to a Pennsylvania State Court matter (Court of Common Pleas) which was dismissed and has no bearing on costs Plaintiffs may be entitled to in this federal lawsuit (Exhibit A). Therefore, Plaintiffs' request for costs in this category, \$1044.50, should be reduced by \$881.50, thereby totaling **\$163.00**.

3. Fees for Summons and Subpoenae (limited to: \$0)

Plaintiffs seek \$5,765.52 in costs for this category.¹ Plaintiffs are not entitled to any costs under this category (Exhibit A). Nowhere in 28 *USCS* § 1920 does it state that these types of expenditures are to be taxed as costs. Further, Plaintiffs used private process servers for the service of the Summons' and Subpoenas and did not pay any fees to the Clerk. Moreover, Plaintiffs seek to recover costs for action taken in a State Court matter and seek costs of Defendants for the service of a Summons & Complaint on another party, which Plaintiffs voluntarily dismissed from the Federal lawsuit.

4. Fees for Court Reporters (limited to: \$10,520.83)

5. Fees for Exemplification and Copies of Papers (limited to: \$7,223.03)

Plaintiffs seek \$14,446.06 in exemplification and copying costs in connection with this case (Exhibit A). Plaintiffs contend that all of these charges were "necessarily obtained for use in the case." These charges are unreasonable and Defendants submit that a more reasonable figure is half the amount requested by Plaintiffs, or **\$7,223.03**.

6. Other Costs (limited to: \$712.40)

Plaintiffs request that \$8,484.44 be taxed as “other costs” (Exhibit A). However, Plaintiffs are not entitled to costs relating to many of the items in this category, specifically, research (\$225.00); Aircraft Model (\$2,427.50); Anglin Aircraft Recovery (\$4,533.30); Aeroscope (exemplar fuel pump) (\$276.24); or Aeroscope (Aerial photograph) (\$300.00). Specifically, 28 *USCS* § 1920 does not provide for these expenditures to be taxed as costs. Plaintiffs may only be entitled to the amounts requested for translation services. Therefore, the maximum amount that Plaintiffs may be entitled to under this “catch-all” category, is \$712.40 (\$8,484.44 less \$7,772.04).

SUMMARY

Accordingly, Plaintiffs costs, if any, should be limited to:

| | |
|--|---------------------------|
| Fees of the Clerk | \$163.00 |
| Fees for service of summons and subpoena | \$0 |
| Fees for court reporter | \$10,520.83 |
| Fees for printing | \$7,223.03 |
| Fees for witnesses | \$5,157.00 |
| TOTAL | <u>\$23,063.86</u> |

CONCLUSION

Based on the foregoing, Plaintiffs’ request for costs should be denied or, in the alternative, reduced by at least the amount set forth above.

(. . . continued)

¹ Plaintiffs also seek witness reimbursement fees under this category, to which they are not entitled.

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
Attorney for Defendant BRP-Rotax GmbH & Co. KG

BY: /s/ Robert J. Kelly
Robert J. Kelly, Esquire
33 Washington Street – 18th Floor
Newark, N.J. 07102

Date: November 8, 2005

EXHIBIT A

AO 133 (Rev. 9/89) Bill of Costs

UNITED STATES DISTRICT COURT

Eastern

District of

Pennsylvania

Theresa Marie Simeone, et al

V.

Case Number: 02CV4852

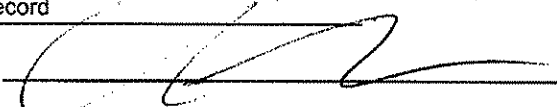
Bombardier-Rotax GmbH, et al

Judgment having been entered in the above entitled action on 10/24/2005 against defendant,
Date
 the Clerk is requested to tax the following as costs:

| | |
|---|--------------|
| Fees of the Clerk | \$ 1,044.50 |
| Fees for service of summons and subpoena | 5,765.52 |
| Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case | 10,520.83 |
| Fees and disbursements for printing | 14,446.06 |
| Fees for witnesses (itemize on reverse side) | 8,218.00 |
| Fees for exemplification and copies of papers necessarily obtained for use in the case | |
| Docket fees under 28 U.S.C. 1923 | |
| Costs as shown on Mandate of Court of Appeals | |
| Compensation of court-appointed experts | |
| Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828 | |
| Other costs (please itemize) | 8,484.44 |
| TOTAL | \$ 48,479.35 |

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill was mailed today with postage prepaid to: All Counsel of Record

Signature of Attorney: Name of Attorney: Alan D. MattioniFor: Plaintiffs Theresa Marie Simeone and Mary Ann LengyelDate: 11/3/2005

Name of Claiming Party

Costs are taxed in the amount of _____ and included in the judgment.

Clerk of Court

By: _____

Deputy Clerk

Date

| NAME AND RESIDENCE | ATTENDANCE | | SUBSISTENCE | | MILEAGE | | Total Cost Each Witness |
|---|------------|---------------|-------------|---------------|---------|---------------|----------------------------|
| | Days | Total Cost | Days | Total Cost | Miles | Total Cost | |
| Donald Sommer 352 Balsam Lane, Boulder, CO 80403 | 2 | 80.00 | 1 | 250.00 | 2 | 003.00 | \$2,333.00 |
| Herbert Newbold 1436 Main Street, Louisville, CO 80027 | 3 | 120.00 | 3 | 375.00 | 2 | 401.00 | \$2,896.00 |
| Manuel Raefsky 17851 N. Silverdale Court, Surprise, AZ 85374 | 2 | 80.00 | 2 | 250.00 | 1 | 527.40 | \$1,857.40 |
| Mark Seader 737 McGraw Circle, Fort Collins, CO 80526 | 1 | 40.00 | 1 | 125.00 | | 766.60 | \$931.60 |
| Ronald Madison, 1517 KBS Road, York County, PA | 1 | 40.00 | | | | 160.00 | \$200.00 |
| | | | | | | | \$0.00 |
| | | | | | | | \$8,218.00 |

"Sec. 1924. Verification of bill of costs."

"Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

Rule 54 (d)

"Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs, but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court."

Rule 6(e)

"Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period."

Rule 58 (In Part)

"Entry of the judgment shall not be delayed for the taxing of costs."

Itemization of Simeone/Lengyel Costs**Fees for the Clerk**

| | |
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| Prothonotary, CCP (Filing Fee – Complaint) | 581.50 |
| Clerk of Court (Filing Fee – Complaint) | 150.00 |
| Prothonotary, CCP (Motions Filing Fee, 12/11/02) | 90.00 |
| Prothonotary, CCP (Certification and Letters Rogatory, 1/9/03) | 30.00 |
| Prothonotary, CCP (Motion Appt. Internat'l Process Server, 6/11/03) | 30.00 |
| Prothonotary, CCP (Motion for Extraordinary Relief, 1/30/04) | 30.00 |
| Prothonotary, CCP (Motion for Extraordinary Relief (2), 4/5/04) | 30.00 |
| Prothonotary, CCP (Motion for Recon of Interlocutory Order, 5/27/04) | 30.00 |
| Prothonotary, CCP (Motion for Extraordinary Relief, 8/5/04) | 30.00 |
| Prothonotary, CCP (Motion Court, 8/6/04) | 30.00 |
| United States District Court (Letters Rogatory) | 13.00 |
| | 1044.50 |

Fees for Summons and Subpoenae

| | |
|--|--------|
| USPS (Internat'l Registered Mail Service of Summons and Complaint) | 67.35 |
| B&R (Attempted Svc of Summons and Complaint) | 90.00 |
| B&R (Service of Complaint) | 75.00 |
| Florida Secretary of State (Svc of State Court Complaint) | 8.75 |
| Florida Secretary of State (Svc of Federal Court Complaint) | 8.75 |
| Robert Lutren (Svc of Federal Court Complaint) | 130.00 |
| Sheriff, Berks County (Svc of State Court Complaint) | 25.38 |
| Merritt & Loew (Svc of First Energy Summons and Complaint) | 70.00 |
| Aallen Bryant & Assoc. (Svc of Interplane LLC Summons and Complaint) | 100.00 |
| Aallen Bryant & Assoc. (Svc of Interplane USA LLC Summons and Complaint) | 100.00 |
| Aallen Bryant & Assoc. (Svc of Interplane USA Inc. Summons and Complaint) | 100.00 |
| Aallen Bryant & Assoc. (Svc of Federal Summons and Complaint) | 150.00 |
| Aallen Bryant & Assoc. (Svc of Lockwood Aviation, Inc. Subpoena) | 101.00 |
| Aallen Bryant & Assoc. (Svc of Lockwood Aviation Supply Subpoena) | 101.00 |
| Aallen Bryant & Assoc. (Svc of Lockwood Aviation Repair Subpoena) | 101.00 |
| Aallen Bryant & Assoc. (Svc of Phillip John Lockwood Subpoena) | 101.00 |
| Interceptor (Attempted Svc of Calif. Power Systems Subpoena) | 65.00 |
| Interceptor (Svc of Calif. Power Systems Subpoena) | 65.00 |
| Interceptor (Svc of Michael Stratman Subpoena) | 95.00 |
| Esquire Deposition Service (Svc of Rini Marine Sales Subpoena) | 115.00 |
| Esquire Deposition Service (Svc of Saylor Honda Seadoo Subpoena) | 145.00 |
| Esquire Deposition Service (Svc of Barris Supply Subpoena) | 127.50 |
| Esquire Deposition Service (Svc of Conneaut Lake Naviagation Co. Subpoena) | 157.50 |
| Esquire Deposition Service (Svc of M.R. Moody Sales & Service Subpoena) | 145.00 |
| Esquire Deposition Service (Svc of Super City Sports & Sales Subpoena) | 145.00 |
| Esquire Deposition Service (Svc of Solomon Chrysler/Plymouth Subpoena) | 145.00 |
| Esquire Deposition Service (Svc of Banik's Sales & Service Subpoena) | 145.00 |

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| Esquire Deposition Service (Svc of AJ's Subpoena) | 183.00 |
| Esquire Deposition Service (Svc of Action Equipment Subpoena) | 183.00 |
| Esquire Deposition Service (Svc of Lombard Motor Sales Subpoena) | 90.00 |
| Esquire Deposition Service (Svc of Bob Thomas Honda/Kawasaki Subpoena) | 145.00 |
| Esquire Deposition Service (Svc of Dave Repair Service Subpoena) | 281.60 |
| Esquire Deposition Service (Svc of Motorsports Cycle Shop Subpoena) | 281.60 |
| Esquire Deposition Service (Svc of Kurtz Kawasaki Sno-Jet Subpoena) | 183.00 |
| Esquire Deposition Service (Svc of Larry Troutman Auto Mart Subpoena) | 183.00 |
| Esquire Deposition Service (Svc of Sport N Turf Subpoena) | 75.00 |
| Esquire Deposition Service (Svc of Sport Cycle Suzuki Sea Doo Subpoena) | 75.00 |
| Esquire Deposition Service (Svc of Horn's Outdoor Center Subpoena) | 150.00 |
| Esquire Deposition Service (Svc of Whitehall Turf Equipment Subpoena) | 75.00 |
| Esquire Deposition Service (Svc of Leisure Equipment Subpoena) | 75.00 |
| Esquire Deposition Service (Svc of Smith Marine Subpoena) | 75.00 |
| Esquire Deposition Service (Svc of Highway Marine Services Subpoena) | 75.00 |
| Esquire Deposition Service (Svc of Pasch Marine Service Subpoena) | 75.00 |
| Esquire Deposition Service (Svc of Wm. Dinbokowitz Marine Subpoena) | 135.00 |
| Paquette & Associes (Svc of Bombardier Inc. Subpoena) | 75.19 |
| Thomas L. Edgell & Assoc. (Svc of Bergfelt Racing Enterprises Subpoena) | 174.42 |
| Talley's Legal Service (Svc of Karbz Inc. Subpoena) | 115.00 |
| Ronald Madison (Witness Fee/Reimbursement) | 240.00 |
| Bergfelt Racing Enterprises (Witness Fee) | 41.48 |
| Mark Bergfelt (Witness Reimbursement) | 100.00 |
| | 5765.52 |

Court Reporter Fees

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|--|----------|
| James DeCrescenzo Reporting (Dep of D. Sommer) | 657.20 |
| James DeCrescenzo Reporting (Dep of H. Newbold) | 371.60 |
| James DeCrescenzo Reporting (Dep of M. Raefsky) | 421.30 |
| James DeCrescenzo Reporting (Dep of R. Fuess, Vol. 1) | 327.75 |
| James DeCrescenzo Reporting (Dep of R. Fuess, Vol. 2) | 116.00 |
| James DeCrescenzo Reporting (Dep of W. Losey) | 558.50 |
| James DeCrescenzo Reporting (Dep of R. Madison) | 181.00 |
| James DeCrescenzo Reporting (Deps of M. Lengyel and T. Simeone) | 557.00 |
| James DeCrescenzo Reporting (Dep of M. Ruff) | 127.05 |
| James DeCrescenzo Reporting (Dep of J. Yatsko) | 573.90 |
| James DeCrescenzo Reporting (Dep of T. McCandless) | 219.25 |
| Esquire Deposition Services (Dep of B. Dawson) | 386.05 |
| Esquire Deposition Services (Dep of M. Bergfelt) | 685.50 |
| McCorkle Court Reporters (Dep of R. Mandarin) | 248.45 |
| Jean E. Dolan Associates (Dep of M. Seader) | 264.00 |
| Barkley Court Reporters (Dep/DVD of K. Orloff) | 1,003.50 |
| Mickey Dinter (Reimb. For Travel to Montreal for Dep of J. Fuerlinger) | 171.61 |
| USAir (M. Dinter to Montreal for Dep of J. Fuerlinger) | 890.65 |
| Nat Douget Court Reporter (Dep of J. Fuerlinger) | 1,410.52 |

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|--|-----------|
| Nat Douget Court Reporter (Dep of J. Fuerlinger/Reporter's Expenses) | 800.00 |
| Ruth Meanor McMahon, RPR (Dep of C. Ferland) | 550.00 |
| | 10,520.83 |

**Fees for Exemplification and Copies of Papers
Necessarily Obtained for Use in the Case**

| | |
|--|-----------|
| Conant (DVD Duplication) | 64.20 |
| Conant (DVD Creation) | 481.50 |
| Conant (Scan/CD Creation/Color blowbacks) | 350.16 |
| Conant (CD Duplication) | 33.60 |
| Conant (Photocopies) | 894.69 |
| Conant (Photocopies) | 868.80 |
| Conant (Photocopies) | 19.26 |
| Conant (Photocopies) | 77.04 |
| Conant (Photocopies) | 176.55 |
| Conant (Trial Exhibit) | 51.68 |
| Conant (Photocopies) | 24.40 |
| Conant (Photocopies) | 78.11 |
| Conant (Photocopies) | 52.22 |
| Conant (Photocopies) | 13.05 |
| Conant (Photocopies) | 86.88 |
| Conant (Photocopies) | 52.22 |
| Conant (Photocopies) | 541.79 |
| Conant (Photocopies) | 9.63 |
| Conant (Photocopies) | 2,361.00 |
| Conant (Photocopies) | 418.69 |
| Conant (Photocopies) | 197.25 |
| Conant (Photocopies) | 17.28 |
| Conant (Photocopies) | 12.84 |
| Conant (Photocopies) | 70.88 |
| Conant (Photocopies) | 12.48 |
| Conant (Photocopies) | 34.56 |
| Conant (Photocopies) | 73.62 |
| Conant (Photocopies) | 26.66 |
| Conant (Trial Exhibit) | 143.49 |
| Conant (Trial Exhibit) | 271.78 |
| Reliable Copy Service | 160.50 |
| Rittenhouse Camera (Photographs) | 16.67 |
| Rittenhouse Camera (Photographs) | 68.33 |
| William Geigert (Lengyel Photo Scanning/Editing/DVD) | 112.50 |
| William Geigert (Simeone Photo Scanning/Editing/DVD) | 200.00 |
| Raynes McCarty (Photocopies) | 272.00 |
| The Wolk Law Firm (Photocopies: 40,665 @ \$.15/copy) | 6,099.75 |
| | 14,446.06 |

Other Costs

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| Considine & Zawadzka (Translation Services) | 450.00 |
| Serve-Em.com (Translation of Letters Rogatory) | 260.00 |
| DOT/FAA (Airman File re George Lengyel) | 2.40 |
| Air Data Research (FAA Database Search) | 225.00 |
| Jerry Hall (Aircraft Model) | 2,437.50 |
| Anglin Aircraft Recovery (Storage of Wreckage, Dec. 2001-Sept. 2005) | 4,533.30 |
| AeroScope (Exemplar Fuel Pump) | 276.24 |
| AeroScope (Aerial Photograph of York Airport) | 300.00 |
| | 8,484.44 |

